

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)
PLAINTIFF,)
VS.)
RAMESH "SUNNY" BALWANI,)
DEFENDANT.)
) CR-18-00258-EJD
) SAN JOSE, CALIFORNIA
) MARCH 21, 2022
) VOLUME 7
) PAGES 974 - 984

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
BY: JOHN C. BOSTIC
JEFFREY B. SCHENK
150 ALMADEN BOULEVARD, SUITE 900
SAN JOSE, CALIFORNIA 95113

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTERS:

IRENE L. RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074
LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

1 | APPEARANCES: (CONT'D)

2 FOR DEFENDANT BALWANI: ORRICK, HERRINGTON & SUTCLIFFE LLP
3 BY: MOLLY MCCAFFERTY
4 SHAWN ESTRADA
THE ORRICK BUILDING
405 HOWARD STREET
SAN FRANCISCO, CALIFORNIA 94105

6 BY: JEFFREY COOPERSMITH
7 AARON BRECHER
701 FIFTH AVENUE, SUITE 5600
7 SEATTLE, WASHINGTON 98104

8 BY: STEPHEN CAZARES
9 77 SOUTH FIGUEROA STREET, SUITE 3200
LOS ANGELES, CALIFORNIA 90017

10 BY: AMY WALSH
51 W 52ND STREET
11 NEW YORK, NEW YORK 10019

ALSO PRESENT: OFFICE OF THE U.S. ATTORNEY
13 BY: MADDI WACHS, PARALEGAL

1 SAN JOSE, CALIFORNIA

MARCH 21, 2022

2 P R O C E E D I N G S

02:04PM 3 (COURT CONVENED AT 2:04 P.M.)

02:04PM 4 (JURY OUT AT 2:04 P.M.)

02:04PM 5 THE COURT: WE'RE BACK ON THE RECORD IN THE BALWANI

02:04PM 6 MATTER.

02:04PM 7 LET ME ASK COUNSEL TO MAKE YOUR APPEARANCES, PLEASE.

02:04PM 8 MR. SCHENK: GOOD AFTERNOON, YOUR HONOR.

02:04PM 9 JEFF SCHENK AND JOHN BOSTIC ON BEHALF UNITED STATES.

02:04PM 10 THE COURT: THANK YOU. GOOD AFTERNOON.

02:04PM 11 MR. COOPERSMITH: GOOD AFTERNOON, YOUR HONOR.

02:04PM 12 JEFF COOPERSMITH FOR MR. BALWANI WHO WAIVED HIS APPEARANCE

02:04PM 13 TODAY. WE FILED A DOCUMENT.

02:04PM 14 I'M JOINED BY MY COLLEAGUES: AMY WALSH, STEPHEN CAZARES,

02:04PM 15 MOLLY MCCAFFERTY, AARON BRECHER, AND SHAWN ESTRADA.

02:04PM 16 THE COURT: THANK YOU. GOOD AFTERNOON EVERYONE.

02:04PM 17 THANK YOU FOR COMING ON SHORT NOTICE. I JUST WANTED TO

02:04PM 18 UPDATE THE PARTIES. WE'RE NOT GOING TO DO ANYTHING SUBSTANTIVE

02:04PM 19 TODAY, BUT JUST PROCEDURALLY ON THE -- FOR SCHEDULING, AND I

02:04PM 20 THOUGHT I WOULD INFORM YOU WE WERE ON A BREAK. WE TOOK A BREAK

02:05PM 21 BECAUSE OF A JUROR'S SITUATION, AND I'M INFORMED THAT THAT

02:05PM 22 JUROR REPORTED THIS MORNING TO OUR CRD AND APPARENTLY HAD A

02:05PM 23 FEVER, SORE THROAT. AND THAT'S THE LAST THAT WE HEARD.

02:05PM 24 I THINK THAT WAS THIS MORNING?

02:05PM 25 THE CLERK: YES.

02:05PM 1 THE COURT: YES.

02:05PM 2 I SHOULD ALSO INDICATE THAT THIS, THIS JUROR HAD TRAVEL

02:05PM 3 PLANS APRIL 6TH THROUGH THE 8TH IF YOU RECALL. I THINK THAT'S

02:05PM 4 CORRECT.

02:05PM 5 (PAUSE IN PROCEEDINGS.)

02:05PM 6 THE COURT: I HAD INTENDED TO BE AVAILABLE -- I

02:06PM 7 THINK WE WERE DARK THE 7TH AND THE 8TH PREVIOUSLY, AND I'VE

02:06PM 8 MADE SOME ADJUSTMENTS TO MY SCHEDULE THAT I WILL BE HERE ON THE

02:06PM 9 7TH AND 8TH.

02:06PM 10 BUT LET ME GET BACK MORE IMPORTANTLY THAT THIS PARTICULAR

02:06PM 11 JUROR. MY THOUGHT IS TO SHARE THAT WITH YOU AND ASK YOU WHAT

02:06PM 12 YOUR THOUGHTS ARE, AND YOU CAN CONSULT WITH YOUR TEAMS IN JUST

02:06PM 13 A MOMENT ABOUT THAT.

02:06PM 14 LET ME JUST SHARE WITH YOU OTHER SCHEDULING ISSUES.

02:06PM 15 ON APRIL 1ST WE'RE SCHEDULED TO BE IN SESSION, AND I WILL

02:06PM 16 NEED TO TAKE A BREAK FROM ABOUT 10:15 TO 11:30. SO IF YOU

02:06PM 17 COULD MAKE NOTE OF THAT, PLEASE.

02:06PM 18 AND THEN ON MAY 24TH AND 25 I HOPE YOUR SCHEDULES SHOW

02:06PM 19 THAT WE'RE DARK THOSE TWO DAYS.

02:07PM 20 THERE IS ALSO POTENTIAL DISRUPTION, AND I APOLOGIZE IN

02:07PM 21 ADVANCE, IN OUR SCHEDULE THE WEEK OF APRIL 18TH. I DON'T KNOW

02:07PM 22 WHAT THOSE DAYS AND TIMES WILL BE, BUT I'VE COMMITTED MYSELF

02:07PM 23 TO, OUT OF A REQUEST BY THE NINTH CIRCUIT, TO HELP THEM DO SOME

02:07PM 24 THINGS FOR INTERVIEWING PURPOSES, AND I DON'T KNOW WHAT THOSE

02:07PM 25 DAYS ARE RIGHT NOW. THOSE DATES HAVEN'T BEEN SET YET, BUT I

02:07PM 1 WILL LET YOU KNOW AS SOON AS I GET THAT INFORMATION.

02:08PM 2 PLEASE RECALL ONE OF OUR JURORS IS TRAVELLING MARCH 25TH,

02:08PM 3 AND I BELIEVE THEY INDICATED THEY WOULD BE BACK ON THE 30TH.

02:08PM 4 THIS WAS THE WEDDING TRIP, I BELIEVE.

02:08PM 5 WE WERE GOING TO SEE IF POTENTIALLY THEY WERE GOING TO

02:08PM 6 RETURN ON THE 29TH.

02:08PM 7 THE CLERK: THEY'RE RETURNING THE 29TH, SO THEY'LL

02:08PM 8 BE HERE ON THE 30TH, BUT THE 29TH IS A TRAVEL DAY.

02:08PM 9 THE COURT: OKAY.

02:08PM 10 MR. COOPERSMITH: SO ON THAT PARTICULAR POINT,

02:08PM 11 YOUR HONOR, SO THIS FRIDAY, THE 25TH, ARE WE GOING TO BE DARK

02:08PM 12 THAT DAY?

02:08PM 13 THE COURT: IT APPEARS THAT WE WILL BE BECAUSE

02:08PM 14 THAT'S A TRAVEL DAY FOR THIS JUROR.

02:08PM 15 MR. COOPERSMITH: AND THEN ON THE 28TH AND 29TH AS

02:08PM 16 WELL, YOUR HONOR?

02:08PM 17 THE COURT: CORRECT. CORRECT.

02:08PM 18 MR. COOPERSMITH: OKAY.

02:08PM 19 THE COURT: AND I APOLOGIZE FOR THESE LARGE BREAKS.

02:08PM 20 I, I -- PARTICULARLY WITH OUR EXPERIENCE, LARGE BREAKS CAN BE

02:08PM 21 PROBLEMATIC, I RECOGNIZE THAT.

02:09PM 22 BUT I WANTED TO UPDATE YOU ON AT LEAST WHAT I KNOW NOW AND

02:09PM 23 PARTICULARLY AS TO THIS ONE JUROR.

02:09PM 24 MAY I GIVE YOU A MOMENT TO CONSULT WITH YOUR TEAMS?

02:09PM 25 MR. SCHENK: MAY I ASK ONE QUESTION?

02:09PM 1 THE COURT: YES.

02:09PM 2 MR. SCHENK: DID THE COURT RECEIVE ANY TESTING

02:09PM 3 INFORMATION REGARDING THIS JUROR?

02:09PM 4 THE COURT: NO, NO.

02:09PM 5 THE CLERK: NO.

02:09PM 6 MR. SCHENK: COULD WE THEN HAVE THE MOMENT?

02:09PM 7 THE COURT: YES. THANK YOU.

02:09PM 8 MR. COOPERSMITH: ONE OTHER THING. I THINK WE'RE

02:09PM 9 DARK ON MAY 6TH AS WELL; IS THAT CORRECT?

02:09PM 10 THE COURT: I DON'T SHOW THAT.

02:09PM 11 MR. COOPERSMITH: THAT WAS MY SON'S GRADUATION.

02:09PM 12 THE CLERK: I'M THINKING APRIL.

02:09PM 13 THE COURT: YES, YES. OF COURSE.

02:09PM 14 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

02:09PM 15 THE COURT: YES, YES, YES.

02:09PM 16 I THOUGHT YOU WERE ASKING IF I HAD PLANS.

02:09PM 17 MY INVITATION TO YOUR SON'S GRADUATION IS LOST IN THE

02:09PM 18 MAIL, SO I MADE OTHER PLANS.

02:09PM 19 MR. COOPERSMITH: YOU KNOW, YOU'RE WELCOME,

02:10PM 20 YOUR HONOR. I DON'T KNOW THAT YOU WANT TO MAKE THAT TRIP BUT

02:10PM 21 OF COURSE.

02:10PM 22 THE COURT: CONGRATULATIONS. OF COURSE WE'RE DARK

02:10PM 23 THAT DAY. I SEE.

02:10PM 24 YES. SO LET'S TAKE A BREAK, AND YOU CAN CONSULT WITH YOUR

02:10PM 25 TEAMS FOR A MOMENT.

02:10PM 1 MR. COOPERSMITH: OKAY. WILL DO. THANK YOU.

02:10PM 2 (DISCUSSION OFF THE RECORD.)

02:15PM 3 THE COURT: WE'RE BACK ON THE RECORD.

02:15PM 4 MR. SCHENK.

02:15PM 5 MR. SCHENK: YOUR HONOR, I SUPPOSE I'M OF TWO MINDS.

02:15PM 6 FIRST, I THINK IT MAKES SENSE TO BEGIN THE TRIAL TOMORROW,

02:15PM 7 AND THE WAY TO DO THAT IS TO EXCUSE THIS JUROR AND USE OUR

02:15PM 8 FIRST ALTERNATE.

02:15PM 9 I WOULD MORE STRONGLY BE IN FAVOR OF THAT APPROACH IF WE

02:15PM 10 WEREN'T ABOUT TO HAVE ANOTHER GAP. WE HAVE TWO TRIAL DAYS,

02:15PM 11 TUESDAY, WEDNESDAY THIS WEEK, AND THEN WE'RE OFF FOR ANOTHER

02:15PM 12 WEEK.

02:15PM 13 SO I THINK THE IDEA OF SPENDING AN ALTERNATE IF WE WERE

02:15PM 14 ABOUT TO HIT A STREAK OF FOUR OR FIVE, SIX RELATIVELY

02:15PM 15 CONSECUTIVE TRIAL DAYS. WE DON'T HAVE THAT IN FRONT OF YOU US

02:15PM 16 UNFORTUNATELY.

02:15PM 17 WHAT WE HAVE IN FRONT OF US IS TWO DAYS AND ABOUT ANOTHER

02:16PM 18 WEEK, ROUGHLY WEDNESDAY TO WEDNESDAY. I THINK THAT'S THE 23RD

02:16PM 19 TO THE 30TH.

02:16PM 20 SO THAT'S WHAT MAKES THIS A LITTLE BIT OF A HARDER CALL.

02:16PM 21 I THINK I WOULD BE A FULL-THROATED SUPPORTER FOR REPLACING THIS

02:16PM 22 JUROR WITH AN ALTERNATE IF WE DIDN'T HAVE FRIDAY AND TUESDAY

02:16PM 23 OFF, BOTH DAYS STARING US IN THE FACE AT THIS POINT.

02:16PM 24 I STILL WOULD SUPPORT THE IDEA OF REPLACING THIS JUROR

02:16PM 25 WITH AN ALTERNATE BECAUSE WE HAVE TO GET THE TRIAL STARTED. WE

02:16PM 1 ALREADY LOST ONE WEEK. WE TOLD THE JURY 13 WEEKS AND IN THEIR
02:16PM 2 MIND THEY WERE NOT THINKING FROM WHENEVER WE BEGIN THE TRIAL IT
02:16PM 3 WILL BE 13 WEEKS. THEY WERE THINKING FROM WHEN YOUR HONOR SAID
02:16PM 4 13 WEEKS TO THEN FROM ROUGHLY THAT DATE, AND WE DO HAVE SOME
02:16PM 5 CONCERNS ABOUT DELAYING THE START ANOTHER FULL WEEK. THAT
02:16PM 6 PUSHES EVERYTHING FURTHER INTO THE SUMMER WHICH GETS INTO
02:16PM 7 ADDITIONAL TRAVEL PLANS.

02:16PM 8 SO I SUPPOSE THOSE ARE THE THOUGHTS.

02:17PM 9 THE COURT: RIGHT.

02:17PM 10 LET ME --

02:17PM 11 (DISCUSSION OFF THE RECORD.)

02:17PM 12 THE COURT: MR. COOPERSMITH.

02:17PM 13 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

02:17PM 14 I THINK MR. SCHENK SUMMARIZED IT ACCURATELY.

02:17PM 15 THE ADDITIONAL THING, AND I WILL SAY ONE ADDITIONAL THING
02:17PM 16 IS THAT EVEN THOUGH IT IS TRUE THAT WE HAVE THIS GAP BECAUSE OF
02:17PM 17 THE OTHER JUROR'S TRAVEL PLANS, WE DON'T KNOW EXACTLY WHAT THE
02:17PM 18 SITUATION WILL BE WITH JUROR 1, AND WHAT I WANT TO SEE HAPPEN
02:17PM 19 IS THAT WE JUST DECIDE NOT TO REPLACE HIM WITH AN ALTERNATE,
02:17PM 20 AND THEN WE EVEN DELAY MORE TIME.

02:17PM 21 SO I THINK OUR SUGGESTION TO THE COURT IS TO REPLACE JUROR
02:17PM 22 NUMBER 1 WITH THE FIRST ALTERNATE AND PROCEED WITH THE TRIAL
02:17PM 23 TOMORROW.

02:18PM 24 THE COURT: WELL, I THINK BOTH OF YOUR OBSERVATIONS
02:18PM 25 OF OUR SCHEDULE IS ACCURATE, WE JUST HAVE TWO TRIAL DAYS THIS

02:18PM 1 WEEK, TOMORROW AND WEDNESDAY, AND THEN THE WEEK OF THE 28TH WE
02:18PM 2 WOULD HAVE TWO TRIAL DAYS, WEDNESDAY THE 30TH AND THE 1ST, I
02:18PM 3 BELIEVE, AND THEN THE FULL -- THE NEXT WEEK IS THE 4TH, AND
02:19PM 4 THERE'S A SCHEDULED INTERRUPTION FOR THE 18TH, AND WE'RE GOING
02:19PM 5 TO HAVE THAT, AND I DON'T KNOW WHAT THAT SCHEDULE IS.
02:19PM 6 I HAVE NOT YET ASKED OUR JURY, AND IT SEEMS LIKE WE HAVE
02:19PM 7 NOT STARTED THE TRIAL YET, BUT I HAVE NOT ASKED THEM WHETHER OR
02:19PM 8 NOT AN 8:30 START, AN 8:00 O'CLOCK START IS SOMETHING THAT THEY
02:19PM 9 CAN HANDLE. WE MIGHT BE ABLE TO CAPTURE SOME EXTRA TIME DOING
02:19PM 10 THAT, TOO.
02:19PM 11 I NEED TO LOOK AT THE ROSTER TO SEE IF THERE ARE -- I
02:19PM 12 THINK THERE ARE SOME THAT TRAVEL OVER THE HILL. BUT WE'LL LOOK
02:19PM 13 AT THAT.
02:19PM 14 ALL RIGHT. MR. SCHENK, ANY OBJECTION TO THE COURT THEN
02:19PM 15 EXCUSING OUR CURRENT JUROR NUMBER 1 AND REPLACING JUROR
02:19PM 16 NUMBER 1 WITH ALTERNATE JUROR NUMBER 1?
02:19PM 17 MR. SCHENK: NO, YOUR HONOR.
02:19PM 18 THE COURT: MR. COOPERSMITH, SAME QUESTION, ANY
02:20PM 19 OBJECTION TO THE COURT EXCUSING JUROR NUMBER 1 AND REPLACING
02:20PM 20 JUROR NUMBER 1 WITH ALTERNATE NUMBER 1?
02:20PM 21 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.
02:20PM 22 THE COURT: ALL RIGHT. THANK YOU.
02:20PM 23 THAT'S WHAT THE COURT WILL DO. JUROR NUMBER 1 IS EXCUSED,
02:20PM 24 AND WE WILL MOVE ALTERNATE NUMBER 1 INTO JUROR NUMBER 1'S SEAT.
02:20PM 25 MADAM CLERK, IF YOU COULD PLEASE CONTACT JUROR NUMBER 1

02:20PM 1 INDICATING AS MUCH, INFORMING AS MUCH, THANKING HIM FOR THE
02:20PM 2 SERVICE, AND ALTERNATE NUMBER 1 AS WELL AS TO THAT ALTERNATE'S
02:20PM 3 ELEVATION.

02:20PM 4 THE CLERK: WILL DO, YOUR HONOR.

02:20PM 5 THE COURT: WHAT ELSE CAN WE ACCOMPLISH TODAY?

02:20PM 6 WE HAVE THE -- COULD YOU REMIND ME AGAIN ABOUT THE MOTION?

02:20PM 7 DID WE RESET THAT? I THINK THERE WERE STIPULATIONS ABOUT

02:20PM 8 SETTING THAT AND MOVING THAT.

02:20PM 9 MR. COOPERSMITH: YES, YOUR HONOR.

02:20PM 10 WE WORKED OUT A BRIEFING SCHEDULE WITH THE GOVERNMENT, AND

02:20PM 11 I BELIEVE THEIR RESPONSE IS DUE TOMORROW, AND THEN THE HEARING

02:20PM 12 IS TO BE SET FOR THE 29TH.

02:20PM 13 SO EVEN THOUGH THAT'S A DARK TRIAL DAY, WE'RE HOPING WE

02:21PM 14 CAN PROCEED WITH THAT AT LEAST.

02:21PM 15 THE COURT: SURE. SURE. LET'S SEE WHAT --

02:21PM 16 THE CLERK: WE HAVE IT SET FOR 10:00 A.M. ON THE

02:21PM 17 29TH.

02:21PM 18 THE COURT: THANK YOU. WE'LL SEE IF THAT STICKS.

02:21PM 19 OKAY. SO I WILL CONTINUE TO UPDATE YOU WITH THE COURT'S

02:21PM 20 SCHEDULE AS SOON AS I GET -- AS SOON AS I HEAR OF ANY CHANGES,

02:21PM 21 BUT I THINK THOSE ARE THE HIGH POINTS FOR NOW.

02:21PM 22 STAY TUNED.

02:21PM 23 MR. COOPERSMITH: OKAY.

02:21PM 24 MR. SCHENK: STAY WELL.

02:21PM 25 THE COURT: YES.

02:21PM

1

THE CLERK: COURT IS ADJOURNED.

02:21PM

2

(COURT ADJOURNED AT 2:21 P.M.)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3 CERTIFICATE OF REPORTER
4
5
6

7 I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED
8 STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA,
9 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
10 CERTIFY:

11 THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS
12 A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
13 ABOVE-ENTITLED MATTER.

14 
15

16

IRENE RODRIGUEZ, CSR, RMR, CRR
17 CERTIFICATE NUMBER 8074
18

19 DATED: MARCH 21, 2022
20
21
22
23
24
25